STATE OF MICHIGAN

COURT OF APPEALS

JAMES M. REINHART,

Plaintiff-Appellee/Cross-Appellant,

v

CENDROWSKI SELECKY, P.C., f/k/a CENDROWSKI SELECKY & REINHART, P.C.,

Defendant-Appellee,

and

HARRY T. CENDROWSKI and JOHN R. SELECKY,

Defendants-Appellants/Cross-Appellees.

UNPUBLISHED
December 30, 2003

No. 239540
Oakland Circuit Court
LC No. 99-015254-CK

JAMES M. REINHART,

Plaintiff-Appellee/Cross-Appellant,

v

CENDROWSKI SELECKY, P.C., f/k/a CENDROWSKI SELECKY & REINHART, P.C.,

Defendant-Appellant/Cross-Appellee,

and

HARRY T. CENDROWSKI and JOHN R. SELECKY,

Defendants-Appellees.

No. 239584
Oakland Circuit Court
LC No. 99-015254-CK

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

In these consolidated cases, defendants Cendrowski Selecky, P.C., Harry T. Cendrowski, and John R. Selecky appeal as of right from a judgment entered following a bifurcated jury/bench trial. Plaintiff James M. Reinhart cross-appeals from this same order. We affirm.

I. Basic Facts and Procedural History

This case arises from the end of a business and employment relationship that spanned more than fifteen years. Plaintiff, a former shareholder and employee of defendant Cendrowski & Selecky, P.C. (CSPC), filed suit against the corporation and its majority shareholders and officers, defendants Harry Cendrowski and James Selecky ("the individual defendants"), after being terminated from the company's employ in December 1998. The suit filed by plaintiff was premised upon his failure to receive a portion of what the parties have dubbed "the Taubman fee," which plaintiff alleged was owed to him under the terms of his employment agreement. Plaintiff also alleged that he was denied his share of corporate profits to which he was entitled under a stock restriction and purchase agreement (SRPA) with the corporation. In seeking to recover these monies, plaintiff alleged breach of contract, conversion, unjust enrichment, promissory estoppel, and breach of fiduciary duty/shareholder oppression in violation of MCL 450.1541a and MCL 450.1489.[1] Plaintiff further sought declaratory relief, seeking to invalidate a provision of his employment agreement that required him to pay to the corporation, for the period of three years, a portion of any fees received by plaintiff from corporate clients for whom plaintiff performed work following his termination. CSPC filed a counterclaim under this provision, seeking the return of more than $30,000 received by plaintiff from its corporate clients since having left CSPC. The defendant corporation also filed a counterclaim seeking specific enforcement of the SRPA, which required that plaintiff tender his shares back to the corporation upon termination.

Before trial, the lower court dismissed plaintiff's claims for breach of contract, unjust enrichment, and promissory estoppel, as asserted against the individual defendants, on the ground that neither of the individual defendants were a party to the written agreements at issue and because plaintiff failed to expressly defend those claims, as concerned the individual defendants, against a joint motion for summary disposition brought by the corporate and individual defendants.

The lower court also bifurcated several of the remaining claims, ordering that the breach of fiduciary duty/shareholder oppression claim be tried before the bench, along with the defendant corporation's counterclaim for specific performance of the SRPA, following a separate jury trial. Consequently, at the time the jury trial commenced, only plaintiff's claims for breach of contract, unjust enrichment, and promissory estoppel, as asserted against the corporate defendant, and his claim for conversion against the individual defendants, were to be presented

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[1] Plaintiff's claims for conversion and breach of fiduciary duty/shareholder oppression were asserted against only the individual defendants. The remainder of his claims were asserted against both the corporate and individual defendants.

for consideration by the jury. However, plaintiff's claim for conversion was ultimately dismissed on the individual defendants' motion for a directed verdict, made following the conclusion of plaintiff's case. Consequently, the jury was asked to decide only plaintiff's claims for breach of contract, unjust enrichment, and promissory estoppel, as asserted against the corporate defendant, and defendant corporation's counterclaim for recovery under the termination provisions of the employment agreement.

The jury found that although no valid contract awarding plaintiff any portion of the Taubman fee existed, the corporation had in fact promised plaintiff a twenty-five percent interest in the Taubman fee. Accordingly, the jury awarded plaintiff $936,159 on his promissory estoppel claim. However, the jury rejected plaintiff's assertions that he had been improperly terminated and that the corporation had been unjustly enriched at his expense, and found that plaintiff breached the non-compete provisions of his employment agreement with the corporation. Accordingly, the jury awarded defendant CSPC $32,960 on its counterclaim.

At the close of plaintiff's proofs at the subsequent bench trial, the trial court directed a verdict in defendants' favor after concluding that plaintiff had failed to prove that defendants "took any action that was not permitted by the [various] agreements" between the parties, as required under MCL 450.1489. The trial court also ordered that plaintiff tender his stock back to the corporation at the price determined to be the value of his shares under the SRPA.

Thereafter, plaintiff and defendant CSPC both moved for judgment notwithstanding the verdict (JNOV); plaintiff challenging the jury's verdict on his breach of contract claim, and CSPC challenging the jury's verdict on plaintiff's claim for promissory estoppel. Defendants Cendrowski and Selecky also moved for costs and sanctions under MCR 2.403(O), which requires imposition of "actual costs" against a party who rejects an award at case evaluation and does not improve his position at trial, and MCR 2.114(F) and 2.625(A)(2), which require an award of costs upon a finding that an action was frivolous. The trial court, however, denied each of the parties' motions.

Each party now appeals from the final judgment below. In Docket No. 239540, defendants Cendrowski and Selecky appeal as of right the trial court's ruling on its motion for costs and attorney fees. In Docket No. 239584, defendant CSPC appeals as of right, arguing that the trial court erred in denying its motion for JNOV or a new trial as to plaintiff's promissory estoppel claim. Plaintiff has filed a cross-appeal in both actions, arguing that the trial court erred in directing verdicts on its claims for conversion and breach of fiduciary duty/shareholder oppression, and in denying plaintiff's motion for JNOV on its claim for breach of contract.

Docket No. 239540

A. Case Evaluation Sanctions

Defendants Cendrowski and Selecky argue that the trial court erred in denying their request, pursuant to MCR 2.403(O), for case evaluation sanctions against plaintiff. We disagree.

MCR 2.403(O)(1) provides that "[i]f a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation." Here, it is not disputed that, before trial, a case evaluation panel determined that plaintiff should receive nothing on its claims

against the individual defendants. It is further not disputed that plaintiff rejected the panel's determination then failed to obtain a more favorable verdict against the individual defendants, each of his claims against those parties having subsequently been dismissed either on motion for summary disposition or directed verdict. See MCR 2.403(O)(2)(c). The dispute here arises from plaintiff's rejection of the panel's contemporaneous determination that he should receive $200,000 on his claims against defendant CSPC, the subsequent jury verdict on those claims awarding plaintiff $936,159, and the following language found in MCR 2.403(O)(4):

> In cases involving multiple parties, the following rules apply:
>
> (a) Except as provided in subrule (O)(4)(b), in determining whether the verdict is more favorable to a party than the case evaluation, the court shall consider only the amount of the evaluation and verdict as to the particular pair of parties, rather than the aggregate evaluation or verdict as to all parties. However, costs may not be imposed on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation.

In applying this subrule, the trial court focused on the final sentence of MCR 2.403(O)(4)(a) and determined that, because the "aggregate verdict" obtained by plaintiff, i.e., $936,159, was greater than the aggregate evaluation of $200,000, the individual defendants were not entitled to case evaluation sanctions. On appeal, the individual defendants argue that the trial court erred in this determination because it was limited under MCR 2.403(O)(4)(a) to evaluating only the evaluation awards and verdicts between themselves and plaintiff. Thus, defendants argue, the lower court should not have aggregated the award from plaintiff's claims against the defendant corporation when determining whether plaintiff obtained a more favorable verdict at trial or case evaluation. We do not agree.

This Court reviews a trial court's decision whether to grant case evaluation sanctions de novo because it involves a question of law, not a discretionary matter. See *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997). The issue at hand also involves interpretation of a court rule, which, like matters of statutory interpretation, is a question of law that is reviewed de novo. *Marketos v American Employers Ins Co*, 465 Mich 407, 412; 633 NW2d 371 (2001).

In *Marketos*, *supra*, our Supreme Court set forth the proper method for interpreting court rules:

> "When called on to construe a court rule, this Court applies the legal principles that govern the construction and application of statutes. Accordingly, we begin with the plain language of the court rule. When that language is unambiguous, we must enforce the meaning expressed, without further judicial construction or interpretation. Similarly, common words must be understood to have their everyday, plain meaning." [*Id*. at 413, quoting *Grievance Administrator v Underwood*, 462 Mich 188, 193-194; 612 NW2d 116 (2000).]

Defendants are correct that, under the plain language found in the first sentence of MCR 2.403(O)(4)(a), the trial court was limited, when determining whether plaintiff had achieved a more favorable verdict than evaluation, to consideration of "only the amount of the evaluation

and verdict as to the particular pair of parties [i.e., plaintiff and the individual defendants], rather than the aggregate evaluation or verdict as to all parties." Defendants are also correct that when properly applied this language requires a conclusion that plaintiff failed to achieve a "more favorable" result as defined in MCR 2.403(O)(3).[2] However, this conclusion does not end the assessment under MCR 2.403(O)(4)(a). As the trial court correctly recognized, the rule goes on to prohibit the imposition of costs "on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation." While defendants argue that this language permits aggregation of only those verdicts and evaluations on claims between the particular pair of parties at issue, to read the rule in such a manner would render the final sentence of MCR 2.403(O)(4)(a) mere surplusage, as it would stand to merely reiterate the concept found in the first sentence of the rule, i.e., that in determining whether imposition of sanctions is proper in cases involving multiple defendants, only those verdicts and evaluations on claims between the particular parties at issue may be considered. Such a result is not permitted under the rules of interpretation to be applied by this Court in construing the language of MCR 2.403(O)(4)(a). See *Yudashkin v Holden*, 247 Mich App 642, 652; 637 NW2d 257 (2001) (courts "must avoid constructions that render any part of a court rule surplusage or nugatory").

Moreover, the final sentence of MCR 2.403(O)(4)(a) begins with the word "[h]owever," which has been defined to mean "nevertheless," or "in spite of that." Random House Webster's College Dictionary (1992). When considered in the context of these commonly accepted meanings, the plain import of the final sentence of MCR 2.403(O)(4)(a) is that it was intended to create an exception to the concept set forth in the first sentence of the subrule, i.e., regardless of whether a verdict between a particular pair of parties is more or less favorable, case evaluation sanctions may not be imposed where the plaintiff achieves an overall verdict greater than the overall evaluation.

Contrary to defendants' assertion, such an interpretation of MCR 2.403(O)(4)(a) does not "produce an illogical and unfair result" by providing immunity from case evaluation sanctions to a plaintiff who files a legally or factually baseless claim. The rule, as interpreted above, permits imposition of case evaluation sanctions under appropriate circumstances. For instance, where a plaintiff fails to both improve his position against an individual defendant and obtain an aggregate verdict greater than the aggregate evaluation as to all parties, the imposition of sanctions in favor of the individual defendant would be required. This is consistent with the purpose of providing case evaluation sanctions, which is to place the burden of litigation costs on a party who demands a trial by rejecting the case evaluation award, yet fails to improve his position at trial. *Dessart v Burak*, 252 Mich App 490, 498; 652 NW2d 669 (2002). The rule, as interpreted by the trial court, merely prohibits placing this burden on a plaintiff who, despite having failed to achieve a more favorable verdict as to any individual defendant, achieves a better overall position at trial. Moreover, sanctions for the filing of legally or factually baseless

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[2] Under MCR 2.403(0)(3), a verdict is considered to be "more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation." MCR 2.403(O)(3) further provides that "[i]f the evaluation was zero, a verdict finding that a defendant is not liable to the plaintiff shall be deemed more favorable to the defendant."

claims are provided for elsewhere in the statutes and court rules. See MCR 2.625(A)(2) and MCL 600.2591. Accordingly, a party who has been forced to defend against such a claim, but finds recovery of costs under MCR 2.403 unavailable, is not without recourse. Therefore, we do not conclude that the trial court erred in denying the individual defendants' request for case evaluation sanctions against plaintiff.

B. Sanctions for Frivolous Claims

Defendants Cendrowski and Selecky also argue that the trial court erred in denying their motion for costs and attorney fees pursuant to MCR 2.114(F) and MCR 2.625(A)(2), which require the imposition of such sanctions against a party who has asserted a frivolous claim or defense. Defendants argue, as they did below, that each of the claims asserted against them by plaintiff were without legal or factual merit, as evidenced by dismissal of those claims either on motion for summary disposition before trial, or by directed verdict following the close of plaintiff's proofs. In deciding defendants' motion, the trial court found simply that there is "no basis for finding that the claims brought by the Plaintiff were frivolous." We find no error in the trial court's decision.

MCL 600.2591(3)(a)[3] provides that a claim or defense is frivolous if at least one of the following conditions is met:

> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit.

A trial court's determination whether a claim or defense is frivolous is reviewed for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A determination is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake was made. *Id*. at 661-662.

Whether a claim or defense is frivolous within the meaning of MCL 600.2591 depends on the facts of each case, *id.* at 662, and must be determined on the basis of the circumstances existing at the time the claim was asserted, *In re Costs and Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002). Thus, contrary to defendants' assertion, plaintiff's inability to defeat a motion for summary disposition or to prove his claims at trial does not itself merit a finding that his claims were frivolous. See *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666

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[3] Pursuant to MCR 2.114(F), a party who files a frivolous claim or defense is subject to assessment of costs under MCR 2.625(A)(2), which provides that if the court finds that an action or defense is frivolous, it must award costs as provided by MCL 600.2591. Under this statute, costs include "all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees." MCL 600.2591(2).

NW2d 310 (2003). Moreover, "[n]ot every error in legal analysis constitutes a frivolous position" warranting the imposition of sanctions. *Kitchen, supra* at 663.

Here, the trial court did not clearly err in concluding that there was "no basis" for finding that the claims brought by plaintiff against the individual defendants were frivolous. As explained below, while these claims were not successful, they were not completely groundless or devoid of arguable legal merit at the time the complaint was filed. MCL 600.2591(3); *In re Costs and Attorney Fees, supra*.

1. Breach of Contract and Promissory Estoppel

Defendants Cendrowski and Selecky argue that because they were not parties to the employment agreement at issue here, and made no personal promises regarding payment to plaintiff of a portion of the Taubman fee, the trial court clearly erred in failing to find that plaintiff's claims for breach of contract and promissory estoppel, as asserted against them individually, were both legally and factually frivolous. However, considering plaintiff's reliance on not only the employment agreement, but also on the October 12, 1993 letter agreement indicating that a portion of the Taubman fee was to be paid directly "to the principals" of CSPC, as well as the fact that plaintiff dealt exclusively with Cendrowski and Selecky in their capacity as majority shareholders when negotiating a right to an increased percentage of the Taubman fee, we cannot deem plaintiff's attempt to hold the individual defendants personally liable for promises or agreements allegedly made during those negotiations to be factually baseless or devoid of arguable legal merit. MCL 600.2591(3)(a)(ii) and (iii). Accordingly, we do not conclude that the trial court clearly erred in failing to find these claims to be frivolous. *Kitchen, supra* at 661.

2. Conversion

In his complaint, plaintiff asserted that defendants Cendrowski and Selecky converted his "property by taking for themselves" his respective portion of the Taubman fee. As defendants correctly note, to support an action for conversion of money there must be an obligation on the part of the defendant to return specific monies entrusted to his care. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999). Defendants argue that because (1) there was no evidence presented at trial that plaintiff entrusted any specific monies to their care, and (2) plaintiff acknowledged at trial that Taubman paid the fee at issue by means of a check made payable to CSPC and not the individual defendants, plaintiff's claim for conversion of the fee was both legally and factually baseless, so as to require imposition of sanctions under MCR 2.114(F) and MCR 2.625(A)(2). However, as noted above, whether a claim or defense is frivolous within the meaning of MCL 600.2591 must be determined on the basis of the circumstances existing at the time the claim was asserted. *In re Costs and Attorney Fees, supra*. Moreover, this Court has held that "[a]n action for conversion lies where an individual cashes a check and retains the full amount of the check when he is entitled to only a portion of that amount." *Citizens Ins Co v Delcamp Truck Center, Inc*, 178 Mich App 570, 576; 444 NW2d 210 (1989), citing *Hogue v Wells*, 180 Mich 19, 24; 146 NW 369 (1914). Here, despite plaintiff's concessions at trial, there is no evidence that at the time the complaint was

filed in June 1999 plaintiff knew that the fee had been paid to CSPC, rather than the individual defendants. To the contrary, plaintiff alleged from the start that the fee was always intended to be paid to the principals of CSPC, an allegation arguably supported by the express language of the October 1993 engagement letter.[4] Moreover, when viewed in this manner the October 1993 letter supports the assertion that plaintiff was entitled to a portion of the money received from Taubman, and that the individual defendants were obligated to remit that portion of the fee to plaintiff upon demand. *Citizens*, *supra*; see also *Globe & Rutgers Fire Ins Co of New York v Fisher*, 234 Mich 258, 260-261; 207 NW 884 (1926) (contract entitling an individual to specific monies will support an action for conversion). That this theory of individual liability was ultimately proven to be factually unsustainable does not render the claim baseless at the time it was asserted. *Jerico*, *supra*. Accordingly, the trial court correctly concluded that plaintiff's claim for conversion was not frivolous within the meaning of MCL 600.2591(3)(a).

3. Unjust Enrichment

Unjust enrichment is an equitable theory of restitution under which "one person is accountable to another on the ground that otherwise he would unjustly benefit or the other would unjustly suffer loss." Restatement Restitution, General Scope Note (1937), p 1. Michigan courts have "long recognized the equitable right of restitution when a person has been unjustly enriched at the expense of another." *Michigan Educational Employees Mutual Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999). In seeking relief on this ground plaintiff alleged that after agreeing to afford him a percentage of the Taubman fee in 1997, the individual defendants "embarked upon a plan and scheme to usurp for themselves" his share of both the fee and corporate profits. Plaintiff further alleged that as part of this plan the individual defendants intentionally deferred billing clients in order to reduce distributable profits until he could be terminated, at which time they negotiated payment of the Taubman fee, which they kept for themselves. It was on the basis of these allegations, which find arguable support in the record, that plaintiff asserted a right to recover his portion of the fee and corporate profits under the theory of unjust enrichment.

While defendants argue that they received no benefit from payment of the termination fee – the fee having been paid to the corporation and not themselves – and that, therefore, plaintiff's claim for unjust enrichment was factually flawed, there is, as previously noted, no evidence that plaintiff was aware that the fee had not been paid directly to defendants at the time he filed his complaint. Moreover, there is record evidence suggesting that although the fee was paid to CSPC, the individual defendants both benefited greatly shortly thereafter; each having received a distribution or other payment from CSPC in excess of one million dollars. Given these facts and circumstances, it cannot be said that plaintiff's claim for unjust enrichment was frivolous within the meaning of MCL 600.2591(3)(a).

[4] This letter agreement expressly provided that in the event the agreement was ever terminated, Taubman would "be obligated to pay to CS&R . . . a termination payment to the principals of CS&R . . . ."

4. Breach of Fiduciary Duty/Shareholder Oppression

Plaintiff alleged in his complaint that the individual defendants' termination of his employment in order to force a sale of his stock under the SRPA and permit them to appropriate the entirety of the Taubman fee, as well as corporate profits, constituted violations of MCL 450.1541a and MCL 450.1489, which provide causes of action for breach of the fiduciary duties of a corporate officer or director, and to "establish that the acts of the directors or those in control of the corporation are . . . willfully unfair and oppressive to the corporation or to the shareholder." MCL 450.1489(1). MCL 450.1489(3) defines "willfully unfair and oppressive" conduct as "a continuing course of conduct or a significant action or series of actions that substantially interferes with the interest of the shareholder as a shareholder." However, that section further provides that this "term does not include conduct or actions that are *permitted by an agreement*, the articles of incorporation, the bylaws, or a consistently applied or written corporate policy or procedure." MCL 450.1489(3) (Emphasis added).

MCL 450.1489(1) provides that if a shareholder establishes grounds for relief, the trial court may "grant relief as it considers appropriate," including the purchase of the aggrieved shareholders stock at "fair value." MCL 450.1489(1)(e). However, as previously noted, following a bench trial on these claims the trial court directed a verdict in favor of the individual defendants after concluding that plaintiff was unable to establish a right to recovery under these statutes. Specifically, the trial court found:

> On review of the extensive record presented, this court is satisfied that there is insufficient evidence to establish that Defendants breached any fiduciary duty to either the corporation or to Plaintiff as a minority shareholder, and thus, Plaintiff is not entitled to any of the remedies set forth in section 1489. Plaintiff has failed to prove that Defendants took any action that was not permitted by the agreements. Thus, the Individual Defendants' Motion for Directed Verdict as to Count V of the Complaint alleging Shareholder oppression is granted.

The trial court's ruling in this regard was apparently premised on the fact that, as argued by defendants below, the defendants' termination of plaintiff and subsequent tender offer for the purchase of his stock at a price determined under the formula found in the SRPA were consistent with the provisions of both the SRPA and the employment agreement entered into by the parties in 1988. On appeal, defendants argue that the trial court's ruling in this regard makes clear that plaintiff's claims for breach of fiduciary duty and shareholder oppression were without merit "as a matter of law," the challenged conduct having been "permitted by an agreement," and that, therefore, they are entitled to reasonable costs and attorney fees under MCR 2.114(F) and MCL 600.2591. However, in making this argument defendants fail to recognize that the statutory language on which the trial court relied in directing a verdict in their favor, i.e., that conduct "permitted by an agreement" does not constitute willfully unfair or oppressive conduct within the meaning of MCL 450.1489(1), was not added to the statutory scheme until more than two years after plaintiff filed his complaint in this matter. See 2001 PA 57. As noted by plaintiff, prior to the enactment of 2001 PA 57, which added the entirety of MCL 450.1489(3), the statute failed to even define willfully unfair and oppressive conduct, let alone except certain conduct from the definition of that term. Consequently, it cannot be reasonably argued that, on the basis of this language, plaintiff's claims for breach of fiduciary duty and shareholder oppression were frivolous at the time they were first asserted. *In re Costs and Attorney Fees, supra*.

Accordingly, the trial court did not clearly err in refusing to award defendants' reasonable costs and attorney fees in connection with plaintiff's assertion of these claims.

5. Declaratory Relief

Defendants Cendrowski and Selecky also argue that they were entitled to reasonable costs and attorney fees incurred in connection with plaintiff's request for declaratory relief, which sought to invalidate the non-compete provision of his employment agreement with defendant CSPC. However, although named as parties in the suit, review of the complaint makes clear that the individual defendants were not called upon or required to defend against this count, their having not been parties to the employment agreement challenged by plaintiff. Accordingly, defendants are entitled to no relief under MCR 2.114(F) or MCL 600.2591.

C. Costs as Prevailing Party

Defendants Cendrowski and Selecky also argue that the trial court abused its discretion in denying their motion for costs under MCR 2.625(A)(1) because they were the prevailing parties. Again, we disagree.

MCR 2.625(A)(1) provides that "[c]osts will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action." Consequently, the taxation of costs under MCR 2.625(A) is within the trial court's discretion, even when the party prevailed in the action. See *Blue Cross & Blue Shield of Michigan v Eaton Rapids Community Hosp*, 221 Mich App 301, 308; 561 NW2d 488 (1997). Here, the trial court denied defendants' costs under MCR 2.625(A)(1) on the record at a hearing on defendants' motion held January 23, 2002. In doing so, the trial court stated simply that it "would note that many of [the requested costs] are not appropriate, including, for example, lunch meetings, parking, computer time, depositions, transcripts not read into evidence and court reporter fees." Defendants do not, however, challenge the trial court's decisions in this regard as a discretionary abuse, but rather argue that because the trial court did not place these reasons in writing, as required by MCR 2.625(A)(1), this Court should reverse the trial court's decision and itself award them costs. We note, however, that while a separate writing detailing the basis for the trial court's decision was not issued, the trial court incorporated its statements at the January 23, 2002 hearing in its written order denying defendants' motion, a practice not uncommon in our judicial system, and which was sufficient to meet the "in writing and filed" requirement of MCR 2.625(A)(1). Accordingly, given the nature of defendants' challenge on appeal, and considering that this Court will generally defer to the trial court's decision on a discretionary ruling so long as the result is not "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias," *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959), we affirm the trial court's decision denying the individual defendants' costs under MCR 2.625(A)(1).

Docket No. 239584

A. Motion for Judgment Notwithstanding the Verdict

Defendant CSPC first argues that the trial court erred in denying its motion for JNOV as to the promissory estoppel claim successfully asserted by plaintiff at the jury trial. We disagree.

Defendant's argument is premised, as it was below, on the well-settled rule that quasi-contractual remedies such as promissory estoppel are inapplicable where the parties have made an express contract covering the same subject matter. See *Cascade Electric Co v Rice*, 70 Mich App 420, 426; 245 NW2d 774 (1976). Relying on this rule, defendant asserts that because the terms of the compensation plaintiff was to receive were covered in the fully-integrated employment agreement executed by the parties in 1988, plaintiff could not advance promissory estoppel as a theory for recovery of additional "compensation," i.e., his claimed share of the Taubman fee. Plaintiff does not dispute the validity of the rule cited by defendant, on which the jury was arguably instructed at trial.[5] Plaintiff asserts, however, that the rule is inapplicable here, as the 1988 agreement between the parties did not contemplate any later agreements concerning his compensation. In denying defendant's motion, the trial court agreed with this argument, stating:

> On review of the arguments of the parties, this Court is satisfied that that the employment agreement did not address any post 1988 compensation issues, such as the 1996 promise for [plaintiff] to receive 25 percent of the Taubman fee as compensation. And, thus, the subject matter of plaintiff's promissory claim is not the same subject matter in the employment agreement.

A trial court's decision on a motion for JNOV is reviewed by this Court de novo, *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 395; 628 NW2d 86 (2001), to determine whether the evidence, when viewed in the light most favorable to the nonmoving party, fails to establish a claim as a matter of law, *Orzel v Scott Drug Co*, 449 Mich 550, 557-558; 537 NW2d 208 (1995). If reasonable jurors honestly could have reached different conclusions based upon the evidence, neither the trial court nor this Court may substitute its judgment for that of the jury. *Hamann v Ridge Tool Co*, 213 Mich App 252, 254; 539 NW2d 753 (1995).

As previously noted, the jury was instructed on the law at issue here and, apparently, concluded that the compensation provisions of the employment agreement did not serve to address the additional compensation alleged by plaintiff to have been promised him. Because the evidence at trial when viewed in the light most favorable to plaintiff supports this conclusion, the trial court did not err in denying defendant's motion for JNOV.

As plaintiff correctly notes, the compensation provisions of his employment agreement relating to salary, bonuses, and fringe benefits indicate that these matters were not static, but would be reviewed and adjusted "from time to time," thereby suggesting that the issue of compensation was, as a general matter, a fluid concept not wholly resolved by the agreement. Moreover, while defendant is correct that the written employment agreement contained an integration clause stating that the 1988 agreement "contains the entire agreement of the parties relating to the subject matter hereof and supercedes all prior understandings and agreements," this language does not foreclose later agreements concerning matters covered in the written

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[5] Whether the jury was sufficiently informed of the tenets of this rule is discussed *infra*.

agreement. More importantly, however, we note that the employment agreement at issue here was executed more than five years before the October 1993 letter agreement that obligated Taubman to pay the termination fee should its relationship with CSPC cease. The extraordinary ramifications to CSPC and its principals represented by payment of this fee, as well as the broad time period between execution of the two agreements, provides a sufficient basis, when viewed in the light most favorable to plaintiff, from which to conclude that the specific subject matter of plaintiff's compensation if and when the fee was ever paid was not covered by the more general provisions of the 1988 agreement. The trial court did not err in denying defendant's motion for JNOV on the ground that plaintiff was precluded from advancing promissory estoppel as a theory of recovery.

Defendant also argues that, even if promissory estoppel was applicable under the facts of this case, the trial court nonetheless erred in declining to grant JNOV because plaintiff failed to present a prima facie case under that theory. Again, we disagree.

In *Stewart v Rudner*, 349 Mich 459; 84 NW2d 816 (1957), our Supreme Court set forth the following definition of a prima facie case: "'a prima facie case means, and means no more than, evidence sufficient to justify, but not to compel, an inference of liability, if the jury so finds.'" *Id*. at 474, quoting *McDaniel v Atlantic Coast Line Railway*, 190 NC 474, 475; 130 SE 208 (1925). To establish a claim based on promissory estoppel, there must be:

> (1) a promise; (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee; (3) which in fact produced reliance or forbearance of that nature; and (4) circumstances such that the promise must be enforced if injustice is to be avoided. [*Booker v Detroit*, 251 Mich App 167, 174; 650 NW2d 680 (2002), rev'd in part on other grounds, 469 Mich 887 (2003).]

"'[A] promise is a manifestation of intention to act or refrain from acting in a specified manner, made in a way which would justify a promisee in understanding that a commitment had been made.'" *Id*., quoting *Schmidt v Bretzlaff*, 208 Mich App 376, 379; 528 NW2d 760 (1995) To determine whether a promise existed, a court must examine objectively the words, actions and circumstances surrounding the situation, as well as the nature of the relationship between the parties. *Novak v Nationwide Mutual Ins Co*, 235 Mich App 675, 687; 599 NW2d 546 (1999). Moreover, the promise must be definite and clear, *Schmidt*, *supra*, and reliance on the promise is reasonable only if that reliance is induced by an actual promise. *Ypsilanti Twp v General Motors Corp*, 201 Mich App 128, 134; 506 NW2d 556 (1993).

In challenging the evidence to support a prima facie case of estoppel, defendant first argues that plaintiff failed to show that the promise at issue here was "definite and clear." *Schmidt*, *supra*. However, we find that when objectively viewed, "the words, actions and circumstances surrounding the situation" at issue here are sufficient to justify a jury in concluding that the promise met both these requirements. *Novak*, *supra*; *Stewart*, *supra*. Neither of the individual defendants denied that negotiations concerning providing plaintiff a twenty-five percent share of the Taubman fee, as compensation for services rendered, took place. Moreover, Cendrowski expressly acknowledged that following these negotiations he requested and received from the corporation's attorney a draft amendment to plaintiff's employment agreement providing for just that. Both Cendrowski and Selecky also acknowledged signing, as members

of the board of directors, a consent resolution approving the amendment and directing the corporate officers to "take any and all action necessary to effectuate" the resolution, "including . . . execution and delivery" of the amendment. Cendrowski further acknowledged that it was he who approved the form of the consent resolution and presented it to the remaining board members for their signature. Although no final draft of the amendment was ever signed, the evidence was nonetheless sufficient to "justify" a conclusion that the promise at issue here, i.e., that a twenty-five percent share of the Taubman termination fee would be provided to plaintiff as "compensation for services rendered," was sufficiently definite and clear for purposes of presenting a prima facie case. *Stewart*, *supra*.

Defendant also argues the evidence was insufficient to show that plaintiff relied to his detriment on the promise to provide him a twenty-five percent share of the Taubman termination fee. Defendant acknowledges plaintiff's testimony that, in anticipation of receiving the fee, he failed to pursue an "open invitation" for a position as a tax partner at the accounting firm of Deloitte & Touche, which was then paying its partners more than he was receiving as an employee at CSPC. Defendant argues, however, that because plaintiff never expressly rejected a formal offer of employment from that firm, and failed to provide more specific facts concerning the details of any such employment, the evidence to support this element of his claim was insufficient to establish a prima facie case. In support of this argument, defendant cites *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438; 505 NW2d 275 (1993) and *Barber v SMH (US), Inc*, 202 Mich App 366; 509 NW2d 791 (1993), for the proposition that it is not enough for a plaintiff to simply assert that he gave up "other opportunities" in reliance on a promise. Here, however, in contrast to the cited cases, plaintiff asserted more than that he gave up "other opportunities." As noted above, plaintiff expressly testified that in reliance on the promise at issue here he chose not to pursue a specific position at a specific firm, which was then paying a greater salary than he receiving from CSPC. This testimony was sufficient to establish a prima facie case with respect to detrimental reliance. *Stewart*, *supra*.

As a corollary to this argument, defendant also asserts that plaintiff was limited to recovery of reliance damages only, and therefore could recover only the difference between his salary at CSPC and that which he would have received had he accepted employment at Deloitte & Touche, a measure of damages not proven at trial. However, 1 Restatement Contracts 2d specifically states that the remedy for a breach of contract based on promissory estoppel should be "flexible," and makes clear that while it is proper in a given case to award only reliance damages, "full-scale enforcement by normal [contract] remedies is often appropriate." Restatement, § 90, comments b and d. Accordingly, enforcement of the promise at issue here to award plaintiff the promised benefit was appropriate.

Defendant CSPC also argues that it was entitled to JNOV because plaintiff failed to present evidence that his reliance on the promise to provide him twenty-five percent of the Taubman fee was reasonable. *Booker*, *supra*. Defendant's claim in this regard is premised on its assertion that the promise, not having been reduced to a signed writing, contradicts the express requirements of the 1988 employment agreement, which requires that, to be binding, all modifications to that agreement be contained in a signed writing. Citing *Novak*, *supra*, for the proposition that it is unreasonable to rely on an oral promise that contradicts an express written agreement, defendant argues that plaintiff's knowledge of this requirement made any reliance on an alleged oral promise that was never reduced to a signed writing unreasonable. However,

unlike the circumstances in *Novak*, *supra* at 686-687, where the plaintiff asserted oral assurances that the at-will provision of his written employment contract would not apply to him, there is nothing in the contract at issue here expressly contradictory to the alleged promise. Although the employment agreement entered into by the parties required that modifications to the agreement be reduced to a signed writing in order "to be valid," this requirement does not, as did the at-will provision as issue in *Novak*, directly conflict with the promise at issue here, i.e., that plaintiff would be entitled to receive a share of the Taubman fee. Moreover, plaintiff testified at trial that he attempted several times to have the draft amendment to his employment agreement setting forth the terms of this promise finalized and signed, and was each time reassured that it would eventually be done. These assurances, when viewed in connection with the signed board resolution purporting to approve the amendment to his employment agreement, were sufficient to justify a conclusion that his reliance on the promise at issue was reasonable.

B. Motion for a New Trial

In the alternative, defendant CSPC argues that the jury's verdict was against the great weight of the evidence and that the trial court, therefore, should have granted its motion for a new trial on this ground. In making this argument, defendant relies upon its challenge to the sufficiency of the evidence at trial to establish a prima facie case, arguing simply that "[f]or the reasons already discussed, plaintiff failed to present sufficient evidence of the elements of promissory estoppel to justify the jury's verdict in his favor of $936,159." However, it is well settled that a jury's verdict should not be set aside if there was competent evidence to support it. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999). Thus, when a party claims that a jury's verdict was against the great weight of the evidence, this Court may overturn that verdict "only when it was manifestly against the clear weight of the evidence." *Id*. As discussed above, plaintiff presented sufficient documentary and testimonial evidence at trial to both support its claim for promissory estoppel and "justify" the jury's verdict in his favor on that claim. *Stewart*, *supra*. Although defendant, through the testimony of its officers, denied the existence of the promise underlying that claim, it is not this Court's role to assess the weight of the evidence or the credibility of the witnesses who testified at trial. See *Kalamazoo Co Rd Comm'rs v Bera*, 373 Mich 310, 314; 129 NW2d 427 (1964). Accordingly, the trial court did not err in refusing to grant defendant a new trial on this ground. *Ellsworth*, *supra*.

Defendant also argues that a new trial is required because the trial court failed to properly instruct the jury regarding the law of promissory estoppel. Again, we disagree.

Claims of instructional error are reviewed de novo on appeal. *Cox v Flint Bd of Hospital Managers*, 467 Mich 1, 8; 651 NW2d 356 (2002). However, a trial court's determination whether a requested instruction was applicable and accurate is reviewed for an abuse of discretion. *Jackson v Nelson*, 252 Mich App 643, 647; 654 NW2d 604 (2002). An abuse of discretion exists only if an unprejudiced person considering the facts on which the trial court acted would conclude that there was no justification or excuse for the ruling made. *Clark v Kmart Corp (On Remand)*, 249 Mich App 141, 151; 640 NW2d 892 (2002). Moreover, reversal is not required unless the failure to do so would be inconsistent with substantial justice. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

At trial, defendant requested that the trial court instruct the jury that "[t]he plaintiff is not entitled to any recovery for promissory estoppel if there is an express contract in force between

the same parties regarding the subject matter," and that any reliance on the promise alleged by plaintiff "must be reasonable and to the plaintiff's detriment." Defendant also requested that the jury be instructed that:

> Promissory estoppel should apply only where you have no question about any of the facts alleged by the plaintiff and where you have no doubt that the plaintiff gave up a job that was formally offered to him in reasonable reliance upon a clear and definite promise.

However, the trial court declined to so instruct the jury, choosing instead to provide instruction only on the elements of a claim for promissory estoppel, as contained in the standard civil jury instructions. See SJI2d 130.01.[6] On appeal, defendant asserts that this limited instruction failed to accurately and fairly instruct the jury on the applicable law, and that the trial court's refusal to grant its requests for instruction, therefore, requires a new trial. We do not agree.

Although the trial court did not expressly instruct the jury that plaintiff was not entitled to any recovery for "promissory estoppel" if there was an express contract between the parties regarding the subject matter of the alleged promise, the court did instruct that:

> [a] contract can be implied only if there is not express contract covering the same subject matter. There cannot be an express and implied contract covering the same subject matter at the same time.

Moreover, counsel for defendant argued during his closing statement to the jury that promissory estoppel could not be used as a substitute for the express terms of the employment contract. That the jury rejected this argument and found in favor of plaintiff on his claim for promissory estoppel does not warrant overturning its verdict. *Case*, *supra*. Moreover, as previously discussed, there was ample evidence from which to conclude that the subject matter of the promise at issue was not covered by the written employment agreement. As such, reversal on this ground is not required. *Id*.; see also MCR 2.613(A).

That the trial court declined defendant's request to instruct the jury that plaintiff's reliance on the alleged promise "must be reasonable and to the plaintiff's detriment" is similarly not grounds for reversal. In giving the standard civil jury instruction on promissory estoppel, the trial court instructed the jury that in order to succeed on this claim plaintiff was required to show that he took "some action in reasonable reliance" on the alleged promise, and that he was "damaged as a result" of that reliance. Such instruction clearly informed the jury of the proposition sought by the requested instruction.

We similarly reject defendant's assertion that the trial court's failure to honor its request to instruct the jury that it could find in favor of plaintiff on a theory of promissory estoppel only if it had "no question about any of the facts alleged by the plaintiff" and "no doubt that the

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[6] The trial court also instructed the jury that "[a] subjective belief that a promise was made when the promise is not explicit is not sufficient to support a claim of promissory estoppel."

plaintiff gave up a job that was formally offered to him in reasonable reliance upon a clear and definite promise," requires a new trial. Although there is arguable legal support for the proposition that application of the theory of promissory estoppel is generally limited to circumstances where the facts are "unquestionable," see *Novak*, *supra* at 687, there is no similar basis to support instruction that a formal offer of employment was required to support a verdict in favor of plaintiff on this claim. Accordingly, because the instruction as a whole was not appropriate, we find no abuse of discretion in the trial court's refusal to read the instruction at trial. *Clark*, *supra*.

Finally, defendant argues that the trial court erroneously instructed the jury that "[i]f the fact of damages has been established, the wrongdoer bears the risk of uncertainty about the amount of damages." Defendant argues that this instruction erroneously placed upon it the burden of the risk of uncertainty with respect to plaintiff's damages. However, even assuming that this instruction was erroneous, the damages sought and awarded here, i.e., twenty-five percent of the Taubman termination fee, were not uncertain. Accordingly, we do not conclude that a failure to reverse on the basis of this alleged error would be inconsistent with substantial justice. *Case*, *supra*.

Cross-Appeal in Docket Nos. 239540 and 239584

A. Directed Verdict: Conversion

Plaintiff argues that the trial court erred in granting a directed verdict on his claim for conversion in favor of the individual defendants. We disagree.

A trial court's decision on a motion for a directed verdict is reviewed de novo. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 701; 644 NW2d 779 (2002). The appellate court reviews all the evidence presented up to the time of the motion to determine whether a question of fact existed. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 663; 575 NW2d 745 (1998). In doing so, the appellate court views the evidence in the light most favorable to the nonmoving party and grants him every reasonable inference and resolves any conflict in the evidence in his favor. *Id*.

As previously noted, in order to establish a claim for conversion of money there must be an obligation on the part of the defendant to return specific money entrusted to his care. *Head*, *supra*. At trial, plaintiff acknowledged during his testimony that the draft amendment to his employment agreement, on which he relied to assert a claim of right to a portion of the Taubman fee, purported to grant him only "a sum *equal to* twenty-five percent" of the fee, rather than a portion of the fee itself. Plaintiff further acknowledged that, given this language, the draft amendment did not afford him a claim against any specific check or fund, but rather only an amount equal to a percentage of the fee. In seeking a directed verdict at trial the individual defendants argued, among other things, that plaintiff had failed to present evidence establishing a right to the specific monies received from Taubman and that, therefore, they were obligated to him, if at all, under a contractual rather than tort theory. The trial court apparently agreed, directing a verdict in favor of the individual defendants after finding that plaintiff's claim was for "breach of contract, whether it be an express or implied contract, and not conversion." We find no error in this decision.

Conversion has been defined as "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." *Citizens*, *supra* at 575. By the time of trial it was not disputed that the termination fee at issue was paid by Taubman through a check made payable to CSPC, and that CSPC cashed this check by placing it in its general corporate checking account. Plaintiff acknowledged at trial that the agreement on which he relied to assert a claim of right to a portion of the money represented by this check afforded him no personal right to the specific monies received from Taubman, but only a sum equal to a percentage of that money. In doing so, plaintiff essentially acknowledged that the individual defendants, wrongfully or otherwise, asserted no dominion over property to which plaintiff claimed a right, and that, as the trial court found, his claim against that money sounded in contract rather than tort. Accordingly, a directed verdict on this claim in favor of the individual defendants was appropriate.

B. Involuntary Dismissal: Breach of Fiduciary Duty/Shareholder Oppression

Plaintiff next argues that the trial court erred in granting a directed verdict on his claim for breach of fiduciary duty/shareholder oppression. We disagree.

As previously noted, plaintiff alleged in his complaint that the individual defendants' termination of his employment in order to force a sale of his stock under the SRPA and permit them to appropriate the entirety of the Taubman fee, as well as corporate profits, constituted violations of MCL 450.1541a and MCL 450.1489. As also previously noted, the trial court dismissed this claim after finding the evidence presented at the bifurcated trials to be insufficient to establish that the individual defendants breached their fiduciary duties or took any other actions inconsistent with the SRPA or the employment agreement entered into by plaintiff. On appeal, plaintiff challenges the trial court's conclusions in this regard, arguing that there was substantial evidence to show that the individual defendants breached both their fiduciary duties and the relevant agreements by failing to execute the amendment to his employment agreement as ordered by the board of directors, terminating his employment without the requisite "board action," and intentionally deferring realization of profits until after plaintiff had been terminated.

This Court treats a motion for a directed verdict in a civil bench trial as a motion for involuntary dismissal brought pursuant to MCR 2.504(B)(2). *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). Pursuant to this rule, the trial court may dismiss the plaintiff's action after the close of the plaintiff's case if the court determines that the plaintiff has not shown a right to recovery under the facts or law. MCR 2.504(B)(2). In ruling on such a motion, the trial court does not view the evidence in a light most favorable to the nonmoving party, as it would when addressing a motion for a directed verdict. *Warren v June's Mobile Home Village & Sales, Inc*, 66 Mich App 386, 389; 239 NW2d 380 (1976). Instead, it acts as a trier of fact, judges credibility, weighs the evidence, and decides the case on the merits. *Id*. A trial court's decision to grant or deny a motion for involuntary dismissal will, therefore, be reversed only where the findings of fact in support of the determination were clearly erroneous. *Id*.; *Begola*, *supra*. This standard does not authorize the substitution of the reviewing court's judgment for that of the trial court. "[I]f the trial court's view of the evidence is plausible, the reviewing court may not reverse." *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

With respect to the individual defendants' failure to execute an amendment to plaintiff's employment agreement despite the signed consent resolution directing that such action be taken,

Selecky testified at trial that the resolution's pronouncement was a "nullity" because no such amendment had in fact been presented to the board or personally agreed to by him. Consistent with this testimony, Cendrowski similarly testified that despite the pronouncement in the January 1, 1997 consent resolution, no finalized version of plaintiff's proposed compensation amendment was ever agreed upon or presented to the board of directors. Despite plaintiff's testimony to the contrary, when this testimony is considered in conjunction with the fact that no evidence of a finalized agreement to amend plaintiff's employment agreement was produced at trial, it cannot be said the trial court, sitting as the trier of fact, clearly erred in determining that the individual defendants breached no fiduciary duty by failing to execute a written amendment to that agreement. *Warren*, *supra*; *Beason*, *supra*.

Because the evidence presented at trial also supports a finding that plaintiff was terminated in a manner consistent with his employment agreement, we similarly reject plaintiff's claim that the trial court erred in concluding that the individual defendants breached neither a fiduciary duty nor the terms of his employment agreement when terminating his employment with CSPC. Plaintiff acknowledged at trial that under the terms of his employment agreement he was, in essence, an "at-will" employee of CSPC and could therefore be terminated for any reason, so long as such termination was by action of the board following thirty days written notice. Although plaintiff now argues on appeal that the required "board action" was not taken because Cendrowski "acted alone" in terminating plaintiff, this argument is not supported by the record. At trial, plaintiff acknowledged meeting with both Cendrowski and Selecky on November 10, 1998, and receiving at that time a set of written talking points, which including as topics the thirty day notice and severance provisions of his employment agreement. Plaintiff also acknowledged that the November 17, 1998 termination letter he received stated that the "written discussion points" given to him on November 10, 1998 were intended to constitute the written notice required by his employment agreement, and that he left CSPC thirty days later without ever having disputed that the discussion points were sufficient notice under that agreement. Plaintiff also acknowledged that Selecky and Cendrowski were the only CSPC board members at that time, and that there was no dispute that the two agreed on the matter of his termination as board directors. Plaintiff further acknowledged that CSPC generally did not hold formal board meetings, but rather conducted those meetings informally, and that he had no knowledge of what Selecky and Cendrowski may have done as board members with respect to his termination. Plaintiff's testimony at trial, which is consistent with that offered by the individual defendants on this matter, belies his argument on appeal and supports the trial court's conclusion that the individual defendants took no action constituting a fiduciary breach, or otherwise inconsistent with the employment agreement, when terminating plaintiff.

Evidence to support the trial court's rejection of plaintiff's claim that the individual defendants, in particular Harry Cendrowski, intentionally deferred realization of profits until after plaintiff had been terminated and asked to tender his stock back to CSPC was also presented at trial. Although acknowledging that he was in fact late in billing his hours on a number of occasions in 1998, Cendrowski expressly denied intentionally withholding his hours and attributed the delays to the demands on his time created by the Taubman restructuring. In support of this claim, Cendrowski noted that his billable hours for Taubman increased nearly four hundred hours over that of the previous year. Moreover, plaintiff himself acknowledged at trial that others in the firm, including himself, had contributed to the billing problems that existed throughout the relevant time period by delaying billing for as long as three months. Although

plaintiff offered evidence to support a conclusion contrary to that reached by the trial court, it is not this Court's function to weigh conflicting evidence. *Kalamazoo Co*, *supra*. Rather, as noted above, so long as the trial court's view of the evidence is "plausible," this Court may not reverse. *Beason*, *supra*. Accordingly, we find no error in the trial court's dismissal of this claim.[7]

We affirm.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello

[7] Because we have concluded that plaintiff's claim for promissory estoppel should be affirmed, we do not address plaintiff's alternative argument that the trial court erred in failing to grant his motion for JNOV with respect to his claim for breach of contract.